



4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/A0A501010.999900 253G]

Albuquerque Indian School District—Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Albuquerque Indian School District (AISD) Liquor Control Ordinance. The ordinance regulates and controls the possession, sale, and consumption of liquor within Albuquerque Indian School (AIS) lands. The ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Albuquerque Indian School District, the governing entity formed by the 19 Pueblos of New Mexico to establish a governance structure for Albuquerque Indian School lands. The ordinance will increase the ability of the AISD to control the distribution and possession of liquor within its Indian country, and will foster tribal economic development, strengthening tribal government, and improving the delivery of services to the Pueblos.

DATES: This law is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Mattingly, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, 1011 Indian School Road, NW, Suite 254, Albuquerque, NM 87104; Telephone: (505) 563-3446; Fax: (505) 563-3101, or

Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Office of Indian Services, 1849 C Street, NW, MS-4513-MIB, Washington, DC 20240; Telephone: (202) 513-7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the Federal Register liquor ordinances that have been duly adopted by Tribes for the purpose of regulating liquor transactions in Indian country. The Albuquerque Indian School lands are Indian country because they are held in trust by the Federal government for the benefit of the 19 Pueblos. The Albuquerque Indian School District Governing Council, exercising by delegation from the 19 Pueblos the governing authority over the AIS lands, duly adopted the Albuquerque Indian School District Liquor Control Ordinance by Resolution No. GC2013–03 on July 24, 2013.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Albuquerque Indian School District Governing Council duly adopted the Albuquerque Indian School District Liquor Control Ordinance by Resolution No. GC2013–03 on July 24, 2013.

Dated: October 5, 2015.

Kevin K. Washburn,
Assistant Secretary – Indian Affairs.

The Albuquerque Indian School District Liquor Control Ordinance shall read as follows:

TITLE 1. BUSINESS REGULATION

CHAPTER 1. LIQUOR CONTROL

Section 1-1-1. Definitions. As used in this Chapter the following definitions shall apply unless the context clearly indicates otherwise:

AISD court means the judicial system for the Albuquerque Indian School District established by the Governing Council pursuant to Article V of the District Charter;

beer means a beverage containing more than one-half percent alcohol by volume, obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale and stout;

District or AISD means the Albuquerque Indian School District, and includes all land made subject to the Albuquerque Indian School District Charter;

District Manager means the District official identified in Article VII of the District Charter;

Governing Council means the District's governing body created by Article II of the District Charter;

liquor includes beer, spirituous liquors, wine, all combinations thereof, and any other intoxicating beverage containing alcohol;

minor means any person under the age of twenty-one (21) years;

Oversight Commission means the body created by Article VI of the District Charter;

package means any container or receptacle used for holding liquor for purposes of sale or delivery to a person;

person means an individual, corporation, firm, partnership, limited liability company,

enterprise or other legal entity;

public place means highways, roads, streets, driveways, sidewalks, garages, parking areas, stores, other shopping areas, government buildings, schools, churches, public meeting halls, restaurants, theaters, lobbies and hallways of office buildings, open spaces, all means of public conveyance, depots, waiting rooms, bus stops, publicly or school-owned parks and/or playgrounds, and any other location that is generally open to and used by the public, including the grounds thereof;

purchase means any purchase, exchange, barter, traffic, or other receipt of liquor by any person, with or without consideration, by any means whatsoever;

sale means any sale, exchange, barter, traffic, donation, distribution, serving, or supplying of liquor by any person, with or without consideration, by any means whatsoever;

server permit means an alcoholic beverage server permit issued by the state of New Mexico pursuant to the Alcohol Server Education Article of the New Mexico Liquor Control Act, NMSA 1978 § 60-6E-1 *et seq.* or a successor statute, provided that, if the Oversight Commission adopts AISD standards for the issuance of server permits, server permit shall mean the permit issued pursuant to the Oversight Commission standards;

special event permit means a permit authorizing the permit holder to dispense alcoholic beverages by the drink, excluding package sales, at the location and during the times specified in the permit;

spirituous liquor means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters or any similar alcoholic beverage, including blended beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol, but excluding medicinal bitters;

wine means beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, that do not contain less than one-half percent nor more than twenty-four percent alcohol by volume.

Section 1-1-2. Purpose. The purpose of this Chapter is to establish limitations and standards for the legalization of the introduction, sale, purchase, service, possession, and public consumption of liquor within the District.

Section 1-1-3. Related Federal and State Laws.

A. For purposes of 18 U.S.C. 1161, this Chapter shall be interpreted and applied as constituting the liquor ordinance adopted under the authority of the Indian Pueblos having jurisdiction over the District.

B. For purposes of the exemption from the New Mexico Liquor Control Act provided by NMSA 1978 § 60-3A-5(D), this Chapter shall be interpreted and applied as constituting the law of the Indian Pueblos authorizing the sale, service, possession or public consumption of liquor within the boundaries of the District, on the terms and conditions stated in this Chapter.

Section 1-1-4. AISD Liquor License.

A. *Governing Council Authorization.* Any person qualified to hold a liquor license under this Chapter may be authorized to engage in the wholesale purchase, retail sale, or retail distribution of liquor within the District upon terms and conditions approved by resolution of the Governing Council and consistent with this Chapter. Any person granted such approval will be deemed to hold an AISD liquor license.

B. *Contents of License.* The license shall specify whether the licensee is authorized

to make package sales, sales by the drink for consumption on the licensed premises, or both. The license shall specify what types of liquor the licensee is authorized to sell and shall identify the licensed premises within which sales are authorized.

C. *License Revocation.* The Governing Council has the authority to revoke an AISD liquor license for any violation of this Chapter or other law applicable to the licensed person, including the tax ordinances enacted by the Governing Council.

D. *Source of Liquor.* The person granted an AISD liquor license must purchase all liquor sold within the District from a person licensed by the state of New Mexico to sell liquor at wholesale.

E. *Revocable Privilege.* A liquor license granted by the Governing Council is a revocable privilege, and no person holding a liquor license shall be deemed to have acquired any vested property rights in or under the license.

F. *Term.* Each liquor license shall be issued or renewed for the term fixed by the Governing Council.

G. *Qualifications.*

(1) An application for a liquor license constitutes a request that the Governing Council make a decision on the applicant's general suitability, character, integrity, and ability to import, sell, dispense, or distribute liquor within the District in conformity with this Chapter.

(2) An applicant for a liquor license and a person to whom a liquor license has been granted shall at all times bear the burden of proving its qualification to hold a liquor license.

(3) No liquor license shall be issued to or held by a person who has been convicted of two or more violations of this Chapter in a twelve month period, or whose liquor license (issued by any jurisdiction) has been revoked at any time. If a person who owns ten

percent (10%) or more of the ownership interests in the entity holding an AISD liquor license is disqualified to hold the liquor license under this Section 1-1-4(G)(3), then the entity is also disqualified to hold an AISD liquor license.

(4) The person holding an AISD liquor license must have the character, integrity, financial ability, and business skills necessary to acquire, sell, dispense, or distribute liquor within the District in conformity with this Chapter.

H. *License Fee.* The Governing Council shall by resolution establish the amount of the license fee required for issuance or renewal of a liquor license authorizing package sales and for issuance or renewal of a liquor license authorizing sales by the drink on the licensed premises.

I. *Investigations.* An applicant for a liquor license and a person to whom a liquor license has been granted shall comply with all administrative subpoenas issued by the District Manager pursuant to Section 1-1-10. If an applicant or licensee, or any employee or principal of an applicant or licensee, refuses or fails to comply with a subpoena issued by the District Manager, that person's application or license may be suspended, revoked, or denied by the Governing Council, based solely upon such failure or refusal.

J. *Special Event Permit.*

(1) Public Events. Any person holding a license under this chapter authorizing sales of liquor by the drink within the licensed premises may dispense liquor at a special public event located outside of the licensed premises upon receiving a permit from the Oversight Commission with the concurrence of the Chairman and Vice Chairman of the Governing Council of the District and upon the payment of the permit fee fixed by the Oversight Commission. As used in this subsection, "special public event" includes any fair, cultural or

artistic performance, athletic competition of a seasonal nature, or other event held on an intermittent basis. The permit shall be valid for no longer than the duration of the special public event.

(2) Private Events. Any person holding a license under this chapter authorizing sales of liquor by the drink within the licensed premises may dispense liquor at a private event located outside of the licensed premises and catered by the licensee upon receiving a permit from the Oversight Commission with the concurrence of the Chairman and Vice Chairman of the Governing Council of the District and upon the payment of the permit fee fixed by the Oversight Commission. The permit shall be valid for no more than twelve hours.

(3) The person holding a license to sell liquor by the drink and its employees shall be the only persons permitted to dispense liquor during the function for which the special event permit was issued.

(4) Issuance of the special event permit is within the discretion of the Oversight Commission.

(5) The special event permit shall identify the location where the special event will take place, the hours and days during which the permit is in effect, and the types of liquor that may be dispensed under authority of the permit. The permit shall not authorize package sales of liquor.

(6) The permittee shall be subject to all District laws and regulations regulating the sale of liquor by the drink.

Section 1-1-5. Server Permit.

A. *Servers.* Every person directly involved in selling, dispensing, or serving liquor within the District shall have a current and valid server permit in his/her possession when

engaged in such activity.

B. *Retailers.* Any person authorized by this Chapter to sell liquor within the District shall not employ or engage any person to sell, dispense or serve liquor within the District unless that person holds a current and valid server permit.

C. *Standards.* The Oversight Commission is authorized, but not required, to establish District standards and requirements under this Chapter for obtaining and retaining a server permit; provided that any such standards and requirements shall be at least as stringent as the requirements applicable outside the District imposed by the Alcohol Server Education Article of the New Mexico Liquor Control Act, NMSA 1978 § 60-6E-1 *et seq.* or a successor statute.

Section 1-1-6. Right to Require Proof of Age; Right to Refuse Sale.

A. *Proof of Age.* Any person authorized by this Chapter to sell liquor within the District shall have the authority to require any person purchasing or desiring to purchase liquor to produce proper evidence of age and identity before making any sale of liquor to such person.

B. *Refusing to Sell.* Any person authorized by this Chapter to sell liquor within the District shall have the authority to refuse to sell liquor to any person who is unable to produce proof of age and identity.

Section 1-1-7. Liability Insurance.

A. *General Public Liability.* Any person authorized by this Chapter to sell liquor within the District shall obtain general public liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence, or such higher amount set by resolution of the Governing Council.

B. *Dram Shop Liability.* If the Governing Council, the AISD court, or another court with jurisdiction to do so imposes dram shop liability on a person authorized to engage in the

sale of liquor within the District, the licensed person shall obtain insurance adequate to cover such liability, in such amount set by resolution of the Governing Council.

Section 1-1-8. Terms and Conditions of Sales.

A. *Election Day.* Sale of liquor is allowed on any state or federal Election Day only to the same extent allowed by state and municipal law within the boundaries of the City of Albuquerque.

B. *Hours for Sales for Consumption on Licensed Premises.* Liquor shall be sold by the drink, served, and consumed on the licensed premises only during the same hours and days allowed by the laws of the State of New Mexico and the City of Albuquerque in effect from time to time.

C. *Hours for Package Sales.* Liquor shall be sold in unbroken packages, for consumption off the licensed premises and not for resale, only during the same hours and days allowed by the laws of the State of New Mexico and the City of Albuquerque in effect from time to time.

D. *Cash Sales.* All sales of liquor shall be for cash, check, money order, debit card, or credit card, and no credit shall otherwise be extended to any person for the purchase price of liquor.

E. *Sales for Personal Use; Resale Prohibited.* All sales of liquor authorized by this Chapter shall be retail sales for the personal use of the purchaser and shall not be for the purpose of resale, whether or not the resale is for profit or in the original container.

F. *Licensed Premises.* All sales of liquor authorized by this Chapter shall take place only within the licensed premises identified in the seller's liquor license or any applicable special event permit.

G. *Participation by Minors Prohibited.* All handling, stocking, possession, and sale of liquor shall be conducted only by persons twenty-one (21) years of age or older. Proof of age must be shown by a current and valid government-issued driver's license or other government-issued form of identification that contains birth date and photo of the holder of the license or identification.

H. *Compliance with Section 9.* All liquor sales shall be conducted in strict compliance with Section 1-1-9.

I. *No Public Nuisance.* All liquor sales shall be conducted in a manner that prevents the creation of a public nuisance on or near the licensed premises.

Section 1-1-9. Civil Offenses. The following conduct is prohibited within the District:

A. *Sales to Minors.* No person shall sell any liquor to any person under the age of twenty-one (21) years.

B. *Purchase or Possession by Minors.* No person under the age of twenty-one (21) years shall purchase, attempt to purchase, possess, or consume any liquor.

C. *Unauthorized Sale.* No person shall sell any liquor except under the authority of, and in conformity with all requirements of, a current and valid AISD liquor license and any applicable special event permit.

D. *Unauthorized Purchase.* No person shall knowingly purchase any liquor from a person who is not authorized to sell the liquor pursuant to a current and valid AISD liquor license.

E. *Sale Outside Licensed Premises.* No person selling liquor under the authority of a current and valid AISD liquor license or special event permit shall sell any liquor outside the boundaries of the premises identified in the liquor license or the applicable permit.

F. *Sale to Intoxicated Person.* No person selling liquor under the authority of a current and valid AISD liquor license shall sell any liquor to any person who the seller has reason to believe is intoxicated.

G. *Sale for Resale.* No person selling liquor under the authority of a current and valid AISD liquor license shall sell liquor with knowledge that the liquor will be resold, either within or outside the District.

H. *Purchase for Resale.* No person shall purchase liquor with the intention of reselling the liquor, within or outside the District.

I. *Drinking in Public Places.* No person shall drink any liquor in a public place that is not part of the licensed premises under a current and valid AISD liquor license or special event permit.

J. *Open Containers Prohibited.* No person shall have an open container of liquor in a public place that is not part of the licensed premises under a current and valid AISD liquor license or special event permit; or shall possess an open container of liquor in or on a vehicle.

K. *False Identification.* No person shall attempt to purchase liquor through the use of false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) years.

L. *Drinking on Premises of Package Store.* No person shall consume liquor on the licensed premises of a facility that is authorized only to sell liquor for consumption off the licensed premises.

Section 1-1-10. Administration.

A. *District Manager.* The District Manager is hereby granted administrative authority to perform the following actions relating to liquor licenses and special event permits

issued under the authority of this Chapter, subject to review by the Oversight Commission:

- (1) investigate applicants for a liquor license or permit and holders of a liquor license or permit to ensure their eligibility to obtain or hold a liquor license or permit, as applicable,
- (2) impose civil penalties under Section 1-1-11,
- (3) issue written demands to comply with this Chapter or any requirement of a liquor license or permit,
- (4) issue administrative subpoenas requiring the production of relevant records, books, information, evidence or other documents and/or the presence and testimony of any person relating to any matter under consideration or investigation by the District Manager under this Section 1-1-10,
- (5) suspend a liquor license for up to forty-five (45) days for any violation of this Chapter,
- (6) perform such other actions that are reasonably necessary and proper to carry out the authority granted by this Section 1-1-10.

B. *Oversight Commission.* A person adversely affected by an act or failure to act of the District Manager in the administration of this Chapter, including suspension of a liquor license, may seek review of the District Manager's conduct by the Oversight Commission, pursuant to procedural rules adopted by the Oversight Commission. The Oversight Commission may affirm, reverse, or modify the action of the District Manager.

C. *Governing Council.* A person adversely affected by a decision of the Oversight Commission may appeal that action to the Governing Council; provided that a written notice of appeal must be filed with the Secretary of the Governing Council within ten (10) business days

of the action being appealed. The Governing Council shall review the appeal based on the administrative record and may conduct such further hearings or other proceedings as it deems appropriate. The decision of the Governing Council is final and is not subject to review by any court or other body.

Section 1-1-11. Penalties.

A. *Civil Penalty.* Any person who knowingly violates any provision of this Chapter shall be subject to a civil assessment of not less than five hundred dollars (\$500) and not more than ten thousand dollars (\$10,000) for each violation.

B. *Criminal Prosecution.* The imposition of civil penalties under this Chapter shall not bar prosecution and conviction of a person who violates any criminal law applicable within the District.

Section 1-1-12. Sovereign Immunity Reserved. Nothing in this Chapter shall be construed as a waiver of the sovereign immunity of the District.

Section 1-1-13. Amendments. This Chapter may be amended by the Governing Council, subject to approval by the Secretary of the Interior or the Secretary's designee.

Section 1-1-14. Effective Date. This Chapter shall be in effect upon the date of publication in the Federal Register by the Secretary of the Interior or the Secretary's designee.